

## **REMARKS**

In response to the final Office Action dated September 22, 2009, the Assignee respectfully requests continued examination and reconsideration based on the above amendments and on the following remarks.

Claims 1-20 are pending in this application, but independent claim 1 has been withdrawn due to restriction.

### **Double Patenting Rejection**

The Office rejected claim 19 for obvious type double patenting over U.S. Patent 7,464,179 (AT&T Docket 030353). A terminal disclaimer is submitted herewith.

### **Objection to Claims 7 & 19**

The Office objected to claims 7 and 19 for antecedent basis. These claims have been amended to cure the antecedent error.

### **Rejection of Claims under § 112**

The Office rejected claims 7-19 under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite. These claims have been amended, so the Office is respectfully requested to re-examine these claims in their current presentation.

### **Rejection of Claims 2-5 under § 103 (a)**

The Office rejected claims 2-5 under 35 U.S.C. § 103 (a) as allegedly being obvious over U.S. Patent Application Publication 2002/0146102 to Lang in view of U.S. Patent 5,970,121 to Homayoun and further in view of U.S. Patent 6,856,963 to Hurwitz.

These claims, though, are not obvious over *Lang* with *Homayoun* and *Hurwitz*. These claims recite, or incorporate, features that are not disclosed or suggested by the combined teaching of *Lang* with *Homayoun* and *Hurwitz*. Independent claim 2, for example, recites “*submitting a bid to an auction moderator via an online auction to segment a stream of data according to a profile.*” Support may be found at least at page 10, first paragraph of the as-filed application.

These features are not obvious over *Lang* with *Homayoun* and *Hurwitz*. *Lang* discloses competitive bidding for telecommunications services. See U.S. Patent Application Publication 2002/0146102 to Lang at [0009], [0016], and [0017]. *Lang* also monitors service providers to ensure they perform. See *id.* at [0020]. *Homayoun* maintains a network connection after a call to permit a party to provide feedback. Still, though, *Lang* with *Homayoun* and *Hurwitz* fails to teach or suggest “*submitting a bid to an auction moderator via an online auction to segment a stream of data according to a profile.*” One of ordinary skill in the art, then, would not think that claims 2-5 are obvious. The Office is thus respectfully requested to remove the § 103 (a) rejection of these claims.

#### **Rejection of Claim 6 under § 103 (a)**

The Office rejected claim 6 under 35 U.S.C. § 103 (a) as allegedly being obvious over *Lang* with *Homayoun* and *Hurwitz* and further in view of U.S. Patent Application Publication 2003/0055723 to English. Claim 6, however, depends from independent claim 2, so dependent claim 6 incorporates “*submitting a bid to an auction moderator via an online auction to segment a stream of data according to a profile.*” One of ordinary skill in the art would not think that claim 6 is obvious, so the Office is respectfully requested to remove the § 103 (a) rejection of claim 6.

#### **Rejection of Claim 7 under § 103 (a)**

The Office rejected claim 7 under 35 U.S.C. § 103 (a) as allegedly being obvious over *Lang* with *Homayoun* and *Hurwitz* and further in view of U.S. Patent Application Publication 2002/0112060 to *Kato* and still further in view of U.S. Patent 6,728,267 to *Giese, et al.*

Claim 7, though, depends from independent claim 2, so claim 7 incorporates the same distinguishing features. The proposed combination of *Lang* with *Homayoun*, *Hurwitz*, *Kato*, and *Giese* still fails to teach or suggest “*submitting a bid to an auction moderator via an online auction to segment a stream of data according to a profile.*” One of ordinary skill in the art, then, would not think that claim 7 is obvious. The Office is thus respectfully requested to remove the § 103 (a) rejection of this claim.

Second, the cited documents teach away from their combination. The M.P.E.P. expressly explains several situations in which a reference “teaches away,” including when a proposed modification “render[s] the prior art unsatisfactory for its intended purpose” or when the proposed modification “change[s] the principle of operation of a reference.” *See* M.P.E.P. § 2145 (X)(D). If *Lang* is combined with *Homayoun*, *Hurwitz*, *Kato*, and *Giese*, as the Office proposes, then *Lang*’s principle of operation must be changed to incorporate all the teachings of *Homayoun*, *Hurwitz*, *Kato*, and *Giese*. The published application to *Lang*, for example, must have its principle of operation changed to transmit a “tracing packet,” a “filtering processing packet,” and a “driving packet,” as *Kato*’s paragraph [0059] teaches. *Lang* must also store the “tracing packet,” execute the “tracing packet,” insert “transfer information,” store an “SLA packet,” and execute the “SLA packet,” as *Kato*’s paragraph [0069] teaches. *Lang*’s principle of operation must be changed to incorporate *Giese*’s “match broker” that analyzes “primitives.” Because these changes are not permitted, the proposed combination of *Lang* with *Homayoun*, *Hurwitz*, *Kato*, and *Giese* cannot support a *prima facie* case for obviousness, so the Office is required to remove the § 103 (a) rejection of claim 7.

**Rejection of Claims 8-20 under § 103 (a)**

The Office rejected claims 8-20 under 35 U.S.C. § 103 (a) as allegedly being obvious over *Lang* in view of U.S. Patent 6,535,592 to *Snelgrove* and further in view of *Hurwitz*.

These claims, though, are not obvious over *Lang* with *Snelgrove* and *Hurwitz*. These claims recite, or incorporate, features that are not disclosed or suggested by the combined teaching of *Lang* with *Snelgrove* and *Hurwitz*. Independent claim 8, for example, recites “*auctioning a block of time of usage of a segmentation service that may be shared between multiple client communications devices*” and “*segmenting streams of data according to the segmentation service.*” Support may be found at least at page 10, first paragraph of the as-filed application. Independent claim 20 recites similar features. As *Lang* with *Snelgrove* and *Hurwitz* fails to teach or suggest at least these features, independent claims 8 and 20 cannot be obvious.

Claims 8-20, then, cannot be obvious over *Lang* with *Snelgrove* and *Hurwitz*. Independent claims 8 and 20 recite distinguishing features, and their respective dependent claims incorporate these same features and recite additional features. One of ordinary skill in the art, then, would not think that claims 8-20 are obvious. The Office is thus respectfully requested to remove the § 103 (a) rejection of these claims.

#### **Rejection of Claim 18 under § 103 (a)**

The Office rejected claim 18 under 35 U.S.C. § 103 (a) as allegedly being obvious over *Lang* with *Snelgrove*, *Hurwitz*, and *English*. Claim 18, however, depends from independent claim 8 and, thus, incorporates the same distinguishing features. One of ordinary skill in the art would not think that claim 18 is obvious, so the Office is respectfully requested to remove the § 103 (a) rejection of claim 18.

#### **Rejection of Claim 19 under § 103 (a)**

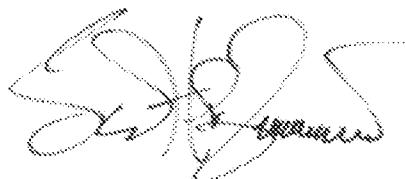
The Office rejected claim 19 under 35 U.S.C. § 103 (a) as allegedly being obvious over *Lang* with *Snelgrove*, *Hurwitz*, *Kato*, and *Giese*. Claim 19, though, depends from independent

claim 8, so claim 19 incorporates the same distinguishing features. One of ordinary skill in the art would not think that claim 19 is obvious.

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If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

Respectfully submitted,



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